

P-421/EM-91-1002; P-421/EM-91-1000 ORDER FINDING FILING  
INADEQUATE AND REQUIRING SUPPLEMENTAL FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Cynthia A. Kitlinski  
Dee Knaak  
Norma McKanna

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request of  
U S WEST Communications, Inc. to  
Restructure and Reprice Centron  
and to Reprice and Restructure  
PBX Trunk and Private Line Rates

ISSUE DATE: April 9, 1992

DOCKET NO. P-421/EM-91-1002

In the Matter of U S WEST  
Communications, Inc.'s Filing to  
Obsolete Centrex Rate Stability  
Plan

DOCKET NO. P-421/EM-91-1000

ORDER FINDING FILING INADEQUATE  
AND REQUIRING SUPPLEMENTAL  
FILINGS

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

On December 20, 1991, US WEST filed a petition to restructure and reprice Centron, PBX Trunk, and Private Line services, and to eliminate Centrex, a service unavailable to new customers since 1979, but still available to customers who were receiving it at that time. On December 23, 1991, US WEST filed notice of its intent to terminate the Centrex Rate Stability Plan, approved by the Commission in 1984, as contracts under the Plan expired. The December 20 filing was assigned docket number P-421/EM-91-1002. The December 23 filing was assigned docket number P-421/EM-91-1000.

In the December 20 filing the Company also proposed to revise pricing terms and conditions for standard elements of three products: Centrex Plus, PBX trunks, and Network Access Channels used in Private Line Transfer Service. US WEST proposed to phase out its Information Distribution service, while honoring existing contracts for the duration of those contracts. Finally, the Company proposed to change the application of the Customer Access Line Charge, to apply it on a per station basis rather than on a trunk equivalency basis as is now the case for Centron and Centrex.

On December 31, 1991, the Commission solicited comments on the Company's filings, including their appropriate procedural treatment. The Commission received comments from the following parties: U S WEST; the Minnesota Department of Public Service;

Enhanced Telemanagement, Inc.; Centex Telemanagement, Inc.; the Minnesota Department of Administration; the City of Rochester; the Telecommunications Consortium of Olmsted County, made up of Olmsted County, Rochester Public Schools, and the City of Rochester; MCI Telecommunications, Inc.; the Minnesota Business Utility Users Council; and the City of Minneapolis.

## **II. The Parties' Comments**

All of the parties who filed comments emphasized the complexity of the filing, the magnitude of the proposed rate changes, or both.

The local governments that filed comments emphasized the magnitude of the proposed rate increases. The Telecommunications Consortium stated the increases would raise Olmsted County's annual telecommunications expense from \$105,375 to \$291,550; Rochester Public Schools' from \$79,100 to \$330,275; and the City of Rochester's from \$33,000 to \$152,800. The City of Minneapolis stated its telecommunications budget would increase from \$184,000 to \$303,000, and expressed frustration at facing such an increase after completing its annual budgeting process.

The Minnesota Business Utility Users Council (MBUUC), representing large business users, stated the proposed rate changes could significantly affect its members' costs of doing business. The MBUUC urged the Commission to adopt a procedure that would allow the MBUUC and similar parties adequate time to obtain and analyze the proprietary cost and revenue data filed in support of the filing. That data was not included in the copies of the filing made available to parties other than the Department of Public Service.

MCI Telecommunications, Inc., Enhanced Telemanagement, Inc., and Centex Telemanagement, Inc., other telecommunications providers, believed the complexity of the filing was compounded by a blurring of the lines between competitive and noncompetitive services and service elements. They saw a need for careful analysis of issues surrounding the relationships between competitive and noncompetitive services, such as the potential for cross-subsidization and discriminatory or anti-competitive conduct.

The Department of Public Service and the Department of Administration stated the filing was defective as a matter of law (under Minn. Stat. § 237.075, subd. 1 (1990)) and inadequate as a matter of fact. Both agencies agreed the filing presents complex factual and policy issues and may well require a contested case proceeding under Minn. Stat. § 14.57 et seq. (1990).

### **III. Proceedings Before the Commission**

The filing came before the Commission on February 11, 1992. At this point, U S WEST requested a one-week continuance to file supplementary comments. The Commission denied the request in light of opposition from the parties and the fact that the Company had filed supplementary comments on January 24 and February 10.

The Commission heard oral argument from all parties present who wished to speak. The following parties presented oral argument: U S WEST, the Minnesota Department of Administration, the City of Minneapolis, Centex Telemanagement, Inc., Minnesota Business Utility Users Council, MCI Telecommunications, Inc., the Telecommunications Consortium of Olmsted County, Enhanced Telemanagement, Inc., the Minnesota Association of Shared Service Equity, and the Minnesota Department of Public Service.

Upon review of the entire record of this proceeding, the Commission makes the following findings, conclusions, and Order.

### **FINDINGS AND CONCLUSIONS**

#### **IV. Commission Action**

The threshold issue in this case is whether the Company's filing meets applicable filing requirements and is ready for consideration on the merits. To make this determination, the Commission must determine which statute controls the filing. The Commission finds that the filing comes under Minn. Stat. § 237.63, subd. 4c (1990), fails to meet applicable filing requirements, and is not ready for consideration on the merits.

##### **A. The Applicable Statute**

The rate restructuring proposed in this filing cuts across competitive/noncompetitive classification lines. It involves Centrex and Centron, which are competitive; PBX trunks and Customer Access Line Charges, which are noncompetitive; and Private Line, which is competitive but includes a noncompetitive service element, special access. Mixed-classification filings raise process questions, since different filing requirements, time frames, and substantive standards apply to competitive and noncompetitive filings. Generally, competitive filings are subject to less intense scrutiny and shorter time frames, on the theory that the market will help keep prices low and quality high.

When dealing with past filings involving both competitive and noncompetitive services or service elements, the Commission has found the most reasonable approach is to treat the entire filing

as noncompetitive.<sup>1</sup> The Commission continues to consider this the best approach. If the competitive and noncompetitive aspects of a proposal are so inextricably linked that the company cannot separate them in preparing a filing, it makes little sense for the Commission to try to separate them in examining the filing. It is also sound regulatory policy to resolve any doubt about the classification of a service or service element in favor of noncompetitive treatment and full regulatory protections. Finally, treating mixed classification filings as noncompetitive removes the risk of companies attempting creative "bundling" of competitive and noncompetitive services and service elements to evade proper classification and review.

The Commission will therefore treat the entire filing as noncompetitive and subject to the requirements of Minn. Stat. § 237.63 (1990), the statute governing miscellaneous tariff filings. Since the filing involves rate increases, rate decreases, new services, and changes in terms and conditions of service, it falls under subdivision 4c, the catchall provision. That subdivision directs the Commission to consider the filing under Minn. Stat. § 237.075, subds. 1 and 2 (1990).

The Company contends that, even if it were proper to treat the filing as noncompetitive and to proceed under section 237.63, it would not be proper to proceed under subdivision 4c. The Company's reasoning is that the only changes to noncompetitive rates and services proposed are rate decreases and changes in terms and conditions of service, which are treated under subdivisions 4 and 4a, not 4c. The Commission disagrees.

First, the Company's argument assumes the Commission will separate the competitive and noncompetitive aspects of the filing and treat them separately, a course of action rejected above. Taken as a whole, the filing clearly proposes some rate increases, which can only be treated under subdivision 4c. Second, it is not true that all proposed changes to noncompetitive services and service elements are rate decreases or changes in terms and conditions of service. The filing proposes a dramatic increase in the Customer Access Line Charges paid by Centron and Centrex users. Customer Access Line Charges are clearly noncompetitive service elements. The Commission therefore rejects this challenge to treating the filing under subdivision 4c.

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<sup>1</sup> In the Matter of U.S. Link Proposing to Offer Operator Services and a New Pricing Plan for Associated Toll Services, Docket No. P-645/EM-91-112, ORDER AUTHORIZING OPERATOR SERVICES AND ASSOCIATED TOLL SERVICES (June 19, 1991). See also, In the Matter of a Proposal by Teleconnect to Make Several Changes in its Minnesota Price List, Docket No. P-478/EM-90-163, ORDER APPROVING TWO PRICE LIST CHANGES AND DISAPPROVING PRICE INCREASES FOR TRAVEL SERVICE AND DIRECTORY ASSISTANCE (November 8, 1990).

## **B. Adequacy of the Filing under the Applicable Statute**

### **1. General Considerations**

The applicable statute, Minn. Stat. § 237.63, subd. 4c (1990) directs the Commission to consider the filing under section 237.075, subds. 1 and 2. Section 237.075, subd. 1 requires the Company to include in its filing "statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested . . ." The Commission finds the filing's format and level of factual detail inadequate under this standard.

Clearly, the level of factual detail and expert opinion necessary to support a proposed rate change varies with the magnitude and complexity of the proposed change. The rate changes at issue are both complex and far-reaching. They cross established lines between competitive and noncompetitive services and service elements; they will have a profound impact on users of Centrex and Centron services, largely due to proposed increases in the noncompetitive Customer Access Line Charge. Comments filed by government, business, and institutional customers suggest these customers could face rate increases in the range of 150%. The magnitude and complexity of this rate change require more than a minimal level of factual support and expert opinion.

Minimal factual support and expert opinion were supplied here. First, the filing does not bear the signature of the Company's General Manager of Regulatory Affairs, who is listed as the signer, but was signed on his behalf by another employee, who was stated to be familiar with the filing. This leaves unclear who is the "expert" whose opinion is being offered in support of the filing.

Second, it is open to question whether the General Manager of Regulatory Affairs qualifies as an expert in a case this complex. While he may have personal knowledge of many of the legal, technical, cost and revenue issues involved here, it is not clear that his testimony alone would provide adequate factual support. Perhaps he could present an adequate filing by identifying the experts who provided the facts and conclusions set forth in the filing and by describing the process he used in supervising its preparation. Since this was not done, however, further inquiry along these lines would be merely speculative.

### **2. Past Practice**

The Company argues that this filing is no different from other filings over the General Manager's signature accepted in the past. The Commission disagrees. The appropriate format and level of detail required in U S WEST filings under Minn. Stat. § 237.63, subd. 4c, the controlling statute here, has been a recurring issue. On September 17, 1991 the Commission issued an Order attempting to clarify the need for more detail in such filings. Since the adequacy of the Company's filing is a crucial

issue at this point, the Commission will quote at length from that Order:

The rate changes at issue are governed by Minn. Stat. § 237.63, subd. 4 (c) (1990), which refers the Commission to Minn. Stat. § 237.075, subd. 1 (1990) for filing standards. The latter section requires the Company to file "statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested."

In this case, the Company made a letter-filing over the signature of its Director of Regulatory Affairs. While the Director may be qualified to render "expert opinion," he should do this in a more traditional format, such as sworn narrative or question and answer testimony. This is necessary both to assure compliance with the statute and to promote regulatory efficiency.

A traditional format helps ensure thorough, carefully prepared filings. Facts presented in structured and verified form are more likely to be checked beforehand, presented in adequate detail, and supported by substantiating evidence. Well prepared filings conserve everyone's resources by minimizing the need to request additional information from the Company. This is no doubt a primary reason that the statute requires expert opinion, substantiating documents, and exhibits.

The Commission finds that future filings subject to review under Minn. Stat. § 237.075 should include expert opinion, presented in a format which makes it immediately recognizable as expert opinion, together with substantiating documents and exhibits.

In the Matter of U S WEST Communications, Inc.'s Proposal to Revise its Access Service Tariff, Docket No. P-421/EM-91-61, ORDER APPROVING TARIFF CHANGES (September 17, 1991).

The Commission noted in a footnote:

The Company correctly notes that the Commission has accepted filings in the past which did not include expert opinion in traditional format. The Commission has not done this to encourage such filings, but because of its reluctance to allow substantive issues to be effectively decided on procedural grounds.

That Order was later amended, at the Company's request, to allow filings to conform with the Commission's Telephone Filing Rules, which are in the final stages of promulgation. ORDER GRANTING MOTION TO MODIFY PREVIOUS ORDER, December 10, 1991, same docket. Under these rules, and the terms of the modified Order,

statements of facts and expert opinions need not be verified, but must be either in question and answer or descriptive narrative form, and must identify the preparer or the person under whose supervision they were prepared. The other terms of the Order were not modified.

The Company stated that in preparing its filing it relied in part on a March 29, 1991 Order accepting a letter-filing signed by the General Manager of Regulatory Affairs, over the objections of the Department of Public Service.<sup>2</sup> Such reliance was misplaced, since that Order was later amended to clarify that it was limited to the unique facts of that case,<sup>3</sup> and since the Order quoted at length above came after the March 29, 1991 Order. The Company therefore had adequate notice that it must take the expert opinion requirement of the statute seriously. The Commission rejects the Company's claim that the filing at issue is adequate in light of the standard(s) of the March 29, 1991 Order.

### **C. Need for Incentive Plan Analysis**

Finally, the Commission considers the Centron/Centrex filing inadequate because it contains no discussion of the effect of the Company's incentive plan on this rate restructuring.

On June 7, 1990 the Commission approved the Company's proposal that it be allowed to operate under an incentive regulation plan that, reduced to its simplest terms, gives the Company a chance to earn more than its authorized rate of return in exchange for rate stability over the life of the plan.<sup>4</sup> The incentive plan raises at least two issues in regard to this filing.

The first issue involves rate stability. In approving the plan, the Commission emphasized the importance of rate stability and the public expectation of rate stability. The need for rate stability was a primary reason for the initial rejection of automatic pass throughs and the final rejection of any pass throughs. It was a significant factor in establishing the threshold at which the Company must begin sharing increased

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<sup>2</sup> In the Matter of Northwestern Bell Telephone Company's Proposal to Change its Rates for Customer-Owned Pay Telephones, Docket No. P-421/M-89-254 (March 29, 1991).

<sup>3</sup> ORDER DENYING RECONSIDERATION AND CLARIFYING MARCH 29, 1991 ORDER (July 17, 1991).

<sup>4</sup> In the Matter of Northwestern Bell Telephone Company's, d/b/a U S WEST Communications, Proposed Incentive Regulation Plan, Docket No. P-421/EI-89-860, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (June 7, 1990).



earnings with ratepayers.<sup>5</sup> Given this emphasis on rate stability throughout the incentive plan proceeding, it is important to analyze the consistency of this rate increase with public expectations, and the legitimacy of those expectations.

The second incentive plan issue is related to the first. Incentive plan regulation is based on the theory that giving a regulated company a chance to earn amounts exceeding its authorized rate of return can release stifled creativity and lead the Company to exploit previously unrecognized operating efficiencies. Rates are more or less capped at pre-plan levels, to ensure that additional earnings in fact result from improved efficiency. Companies proposing major rate increases while operating under incentive plans therefore carry a heavy burden to justify them. The Company maintains that the rate restructuring at issue is consistent with incentive plan theory and that it will result in an inconsequential revenue and earnings decrease. This is an allegation on which the facts must be adequately developed and examined, first by interested parties, then by the Commission.

#### **D. Supplemental Filings Required**

The Company states the proposed rate restructuring is necessary to comply with Federal Communications Commission directives on the Customer Access Line Charge and with current interpretations of the Modified Final Judgment, entered at the divestiture of AT&T. Given these allegations, the Commission cannot simply dismiss the filing as inadequate, but must require the Company to make supplemental filings to bring it into compliance with applicable filing requirements.

The Commission will therefore require the Company to make its filing whole within 45 days of the date of this Order. To complete the filing, the Company should file detailed expert testimony in question/answer format, establishing the factual basis for the proposed restructuring and for the Company's assertion that it will be revenue neutral in result. Each portion of the filing should identify the person who prepared it and the person under whose supervision it was prepared. The Company should also provide its analysis of how the proposed

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<sup>5</sup> "Although this threshold is higher than those recommended by interested persons, the Commission believes it adequately reflects the plan's risk to the Company. The Commission notes that it took special care to maximize the plan's potential for rate stability, by rejecting automatic pass throughs and guaranteed income neutrality, for example, because of strong indications that the public expects rate stability under the plan. Maximizing rate stability has increased the risks to the Company, which should be reflected in the sharing threshold." June 7, 1990 Order, p. 26.

restructuring relates to the incentive plan. Obviously, the ten-month deadline for Commission action on the filing, Minn. Stat. § 237.075, subd. 2 (1990), does not begin to run until the filing is complete.

#### **E. Centrex Rate Stability Plan**

In its December 23 filing to render its Centrex Rate Stability Plan obsolete, the Company stated it would stop signing new long term contracts with Centrex subscribers on January 3, 1992, but would allow customers whose contracts expired to continue month-to-month at existing contract rates until the Commission took final action on the filing. The Department of Public Service recommended approving this approach and consolidating the Centrex Rate Stability Plan filing with the Centron filing.

The Commission agrees that allowing customers to continue at existing rates is the most reasonable and least disruptive approach, and will approve the Company's proposal to do so. The Commission also agrees that administrative efficiency favors consolidating the Rate Stability Plan filing with the Centron filing, and will so order.

#### **ORDER**

1. U S WEST Communications, Inc.'s December 20, 1991 filing proposing to restructure and reprice Centron, PBX Trunk, and Private Line rates is found to be incomplete under Minn. Stat. § 237.63, subd. 4c (1990) and Minn. Stat. § 237.075, subd. 1 (1990).
2. Within 45 days of the date of this Order, the Company shall make supplemental filings bringing the December 20 filing into compliance with applicable filing requirements. Such supplemental filings shall include at least the following items:
  - a. detailed expert testimony in question/answer format, establishing the factual basis for the proposed restructuring
  - b. detailed expert testimony in question/answer format, establishing the factual basis for the Company's assertion that the proposed restructuring will be revenue neutral in result, especially over the next two or three years, as existing contracts with customers expire
  - c. the Company's analysis of how the proposed restructuring relates to the incentive plan.

3. Each portion of each supplemental filing shall identify the person who prepared it and the person under whose supervision it was prepared.
4. The Company's proposal to render its Centrex Rate Stability Plan obsolete, Docket No. P-421/EM-91-1002, is consolidated with the Company's proposal to restructure and reprice Centron, PBX Trunk, and Private Line rates, Docket No. P-421/EM-91-1000.
5. The Company's proposal to continue providing Centrex service under existing contract rates to customers whose Rate Stability Plan contracts expire before the Commission takes final action in Docket No. P-421/EM-91-1000 is approved.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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